

# **Trial Rule 77 Quick Guide**

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## Table of Contents

Easy Reference Sheet.....	3
Introduction.....	4
TR 77(A), Required Records .....	5
TR 77(B), Chronological Case Summary .....	6
TR 77(C), Case Files.....	8
TR 77(D), Record of Judgments and Orders (Order Book).....	9
TR 77(E), Indexes .....	10
TR 77(F), Pleadings and Papers: Where filed and entered.....	11
TR 77(G), Case File Status .....	12
TR 77(H), Statistics .....	13
TR 77(I), Replacing Lost Papers .....	14
TR 77(J), Method of Record keeping .....	15
TR 77(K), Electronic Posting of Court Records .....	16
Trial Rule 5(F), Filing with the Court Defined.....	17

## Easy Reference Sheet

- Trial Rule 77 is the basic framework for court records, and it establishes four sets of records to be maintained. *Page 4*
- Chronological Case Summaries are a sequential, brief record of the activities and actions in a particular case. The CCS is the court's case management tool and should be accurate both as to the date events occurred, as well as in summarizing the nature of these events. *Page 6*
- CCS entries should **never** be backdated. Rather, they should reflect the correct date of entry and refer to an earlier date in the text of the entry if an event occurred on a different date than the entry date. *Page 7*
- Case Files are important repositories of documents and materials filed with the court. Case files need not include extraneous items such as transmittal letters, instructions or envelopes that are not related to the case in some fashion. *Page 8*
- The Record of Judgments and Orders is a daily, verbatim compilation of all judgments of the court, as well as designated orders. "Designated Orders" are ones that have some substantive bearing on the case. All orders of the court need not be placed in the RJO but need entry on the CCS as an event. *Page 9*
- The judge issuing the order should decide whether an order is "designated" for the purposes of the RJO. *Page 9*
- RJO's may be kept in a paper format, on microfilm, or electronically, after approval is received from the Division of State Court Administration. *Page 9*
- Pleadings or papers filed with a court/clerk must comply with Trial Rule 5. *Page 11*
- Case files and court records shall be maintained according to the retention schedules found in Administrative Rule 7. *Page 12*
- Clerk's offices are required to develop procedures to maintain a statistical count of actions filed, decided and reinstated. *Page 13*
- Pursuant to Trial Rule 77(J), clerks may keep records in any suitable media. All recordkeeping systems must be approved by the Division of State Court Administration. *Page 15*
- Court records that are to be made available electronically through either remote electronic access or the Internet must seek the approval of the Division of State Court Administration and must observe all necessary rules and regulations regarding confidentiality and access to court records. *Page 16*

## **INTRODUCTION**

Trial Rule 77, “Court Records,” is the basic framework for court/clerk record creation and management. This rule was promulgated by the Supreme Court of Indiana and made effective January 1, 1991. It replaced an earlier version of a rule that set standards for docket sheets and order books. This Quick Guide is intended to provide guidance to clerks and courts in handling some particular situations encountered with court records and also to assist with some frequently asked questions

Trial Rule 77 requires four sets of judicial records to be maintained by trial courts:

- 1) the Chronological Case Summary (CCS);
- 2) the Record of Judgments and Orders (RJO);
- 3) indexes of all court actions and proceedings; and
- 4) the case file (pleadings and papers).

In addition, Trial Rule 77 sets forth standards for maintaining statistics, for replacing lost records, for general record keeping, and for the electronic posting of court records.

## **Trial Rule 77(A)**

**Required records.** The clerk of the circuit court shall maintain the records for all circuit, superior, county, probate and municipal courts in the county.

- (1) The clerk of the circuit court shall maintain any record required by an act of the general assembly or a duly promulgated rule of any state agency, including the following:
  - (a) Lis pendens record (IC 34-1-4-1);
  - (b) Record of transcripts and foreign judgments (IC 33-17-2-3(d));
  - (c) Judgment Docket (IC 33-17-2-3), wherein all orders requiring entry in the judgment docket shall include the term "judgment" in the title and shall set forth the specific dollar amount of the judgment in the body of the order;
  - (d) Execution docket (IC 33-17-2-6);
  - (e) Records specified under the probate code; and
  - (f) Records specified by the state board of accounts as to the fiscal matters relating to the court and clerk.
- (2) The clerk of the circuit court shall also maintain the following records as specified under this rule:
  - (a) Chronological case summary;
  - (b) Case file;
  - (c) Record of judgments and orders (order book); and
  - (d) Indexes.

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- The form and requirements for Section 1 are governed either by statute or by a state agency rule. These records are not considered judicial records but are created as part of, or as a result of, a judicial action. Only those records required under Section 2 are judicial records and are governed by this rule.
  - This rule provision corresponds to Administrative Rule 10(B), which says that "[e]ach Clerk is responsible for the maintenance of court records in a manner consistent with the directives of the Supreme Court of Indiana, judge of court, and other pertinent authority. In all instances, the Clerk of the court must safeguard the integrity and security of all court records in his or her custody and diligently guard against any prohibited practice."
  - The medium in which judicial record are preserved is covered under Administrative Rule 6. Retention and disposition of all court rules, including those required under Trial Rule 77, are covered under Administrative Rule 7.

## **Trial Rule 77(B)**

**Chronological Case Summary.** For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding. The record shall include the title of the proceeding; the assigned case number; the names, addresses, telephone and attorney numbers of all attorneys involved in the proceeding, or the fact that a party appears pro se with address and telephone number of the party so appearing; and the assessment of fees and charges (public receivables). Notation of judicial events shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case. The chronological case summary shall also note the entry of orders, rulings and judgments in the record of judgments and orders, the entry of judgments in the judgment docket (IC 33-17-2-31), and file status (pending/decided) under section (G) of this rule. The chronological case summary shall be an official record of the trial court and shall be maintained apart from other records of the court and shall be organized by case number.

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- The CCS is the court's case management tool and as such must accurately record each event as it occurs. The key to understanding the function of the CCS is the need to understand the concept of an event. A judicial event is an action on the part of a litigant, his or her attorney, and those of the court. The court and clerk must accurately record each event as it occurs and enter each action on the CCS as of the date of such action. Some courts and clerks use a file stamp for recording events filed by litigants and attorneys and a "received" stamp for recording events performed by the court.
  - The rule recognizes that not all events are entered on the CCS as they occur; however, the noting of the progressing of an event is equally important as noting the event itself. For example, the court may issue an order on one date but the order does not arrive in the clerk's office for several days. Such an entry might be as follows: "order for discovery signed by the judge on January 4, 2006 and received in this office January 7th."
  - The requirement for maintaining a sequential record of events in a case means that events are never backdated.
  - The date of a CCS entry should be the date that the entry is made, regardless of the date on the particular document or the date the activity occurred. The text of the CCS should indicate the effective date of the document or the activity.
  - When a court order bears a date other than the one when it's delivered to the Clerk's office for entry in the public record, the CCS entry must be made as of the date the order is given to the clerk for entry in the public record with a statement indicating when the order is actually dated

- A CCS entry must be made on the date that an order is entered into the RJO indicating that is the date on which the order may be found in the RJO. [The CCS serves as the index, or locator, of orders, decrees and judgments of the court, as the later are entered in the RJO.] If the date the order is entered in the CCS is the same as the date it's entered in the RJO (as it should be), then the same entry will suffice as long as it indicates that the order is entered in the RJO of that day.
- Clerks must make CCS entries of filed documents and orders on the day that they are transmitted to the Clerks office.
- A CCS entry **should never be amended, corrected or deleted once made.** It may be amended only by another corrective CCS entry. Some courts, upon written approval of the Division of State Court Administration, post CCS entries on the Internet and as such it very important that the record in a case does not just change from one day to the next.
- In the instance of pleadings filed pursuant to Trial Rule 5(F) by registered, certified or express mail, return receipt requested OR by third-party commercial carrier for delivery to the clerk within three (3) calendar days, the pleadings should be stamped as received on the date the mail is received. The CCS entry should be the date received, and the text of the CCS entry should reflect that the pleading is considered filed at an earlier date, and indicate what that date is.
- All documents handled by the clerk's office that will have a CCS entry should be stamped reflecting the date of receipt. This permits someone to associate the document correctly to its CCS entry.
- Entries in the CCS are intended to be very brief, while retaining enough detail to be meaningful to someone accessing the records. The full text of orders and judgments should never be entered into the CCS. The correct mixture of brevity and descriptiveness is one that must be left up to each individual jurisdiction; however, as a general rule, one should be able to discern from those entries not all of the particular details of a particular action, but enough to correctly understand the activity. So, for example, a CCS that reads "Motion received" or "Motion granted" is not descriptive enough, but it should never be the case that the full text from the motion or the order is copied into the CCS.

*As a practical matter, CCS entries should never be backdated. Imagine the person who gets a certified copy of a CCS on December 1, which shows no activity in the case for the prior two weeks. On December 2, two orders are placed on the CCS but are backdated rather than placed on the CCS in the correct chronological order (which would be the order of entry). This makes the December 1 CCS incomplete, but in a way that makes it impossible to have confidence that the document one gets from the clerk's office on any date will not be later changed. For this same reason, all documents should be stamped as received, so that they have a visible date that can be cross-referenced to a CCS entry from that same date.*

## **Trial Rule 77(C)**

**Case file.** In each case assigned a case number, the clerk of the circuit court shall maintain a file containing a copy of any order, entry, or judgment in the case and the original of all other documents relating to the case: including pleadings, motions, service of process, return of service, verdicts, executions, returns on executions and, if prepared, certified, and approved, the transcript of the testimony. The original order, entry, or judgment shall be maintained as part of the record of judgments and orders, the file shall contain a copy of such original. Unless necessary to detail the filing chronology, the case file need not include transmittal letters, instructions, envelopes or other extrinsic materials not related to the issues of the case. The file shall contain an index tab listing the case number and an abbreviated designation of the parties and shall note the information required under section (G) of this rule. In the event the court does not maintain a separate evidence file, documents entered into evidence, including depositions, shall be placed into the case file.

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- Case files are important repositories of documents that have been filed or prepared in a particular case. The case file should contain information that is relevant to the resolution of the case.
  - The CCS frequently is kept with the case file until final disposition, upon which, under 77(B), the CCS is to be maintained separately.
  - “The original order, entry, or judgment shall be maintained as part of the record of judgments and orders, the file shall contain a copy of such original.”
  - Additional information regarding the determination of assigning case numbers in specific cases is found at the Supreme Court of Indiana’s web site, under Division of State Court Administration, Court Management and Statistics, as “QCSR and Statistics Frequently Asked Questions.”



## **Trial Rule 77(D)**

**Record of judgments and orders (order book).** The clerk of the circuit court shall maintain a daily, verbatim, compilation of all judgments of the court, designated orders of the court, orders and opinions of an appellate tribunal relating to a case heard by the court, local court rules under Trial Rule 81, certification of the election of the regular judge of the court, any order appointing a special judge, judge pro tempore, or temporary judge, the oath and acceptance of any judge serving in the court, any order appointing a special prosecutor, and the oath and acceptance of a special prosecutor. The record of judgments and orders may be kept in a paper format, on microfilm, or electronically. The clerk may maintain a separate record of judgments and orders as required for the functional management of the court's business. Except where the record of judgments and orders is maintained electronically, a separate record of judgments and orders for confidential materials shall be maintained.

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- Much like the CCS, orders should be placed in the RJO on the date the clerk's office receives (and date stamps) them. The CCS's reference to the RJO's entry serves as a link or index to the RJO.
- The RJO should not have every order of the court placed in it. Instead, the RJO should contain final judgments of the court and "designated" orders of the court.
- A designated order is one that reflects some *substantive* content such as a judicial action or opinion that contributes to the resolution of the case. Procedural orders, such as orders granting a continuance, are not normally placed in the RJO.
- The final decision-maker about whether an order should be placed in the RJO is the judge issuing the order, even if the order appears to be one that would not ordinarily be placed in the RJO.
- All orders that conclude a case or orders that restrict the freedom of an individual must be placed in the RJO.
- Use of a form with an RJO check box may be helpful to make the process uniform and easy for everyone involved. [The Division of State Court Administration, at its web site, under forms, has a "Chronological Case Summary Entry Form," that may prove helpful.]
- In general, too many routine orders are placed in the RJO, which in turn makes it large and cumbersome to store and use effectively.
- Contact the Division of State Court Administration for assistance in maintaining the RJO in an electronic format.

## **Trial Rule 77(E)**

**Indexes.** In addition to any index required under the provisions of this rule, state statute, or duly promulgated rule of a state agency, the clerk of the circuit court shall prepare and maintain indexes of all actions and proceedings in the circuit, superior, county, probate, and municipal courts in the County. This index shall be in an alphabetical format which notes the names of all parties, the date on which a party became part of the proceeding, and the case number of the proceeding. In the event courts are not located in the county courthouse, the clerk shall supervise the appropriate preparation of indexes for these courts and provide for the combination of indexes for all courts in the county.

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- The Index is an essential tool that allows records to be located in the clerk's office. Maintaining an accurate Index allows members of the public to have meaningful access to court records by being able to locate case files.
- The Index can be maintained in an electronic format so long as the data fields required of 77(E) are maintained.

## **Trial Rule 77(F)**

**Pleadings and papers: Where filed and entered.** All pleadings and papers shall be filed in accordance with Trial Rule 5 with the clerk of the circuit court. In the event a court is not located in the same facility as the clerk of the circuit court, all pleadings and papers shall be filed with the clerk serving that court. If an initial pleading or complaint is assigned to a court not within the facility where the initial pleading or complaint was filed, the clerk shall promptly notify the person filing the pleading and transmit the documents to the clerk serving the court where the matter will be considered and all further papers will be filed with the latter court. In the event an initial pleading or complaint is filed with the clerk of the wrong court, the clerk, upon notice to the person filing the initial pleading or complaint, may transfer the case to the proper court before service of summons or appearance of other parties, or any opposing party may move for transfer as provided for under Trial Rule 12(B) or Trial Rule 75.

For the language of Trial Rule 5(F) “Filing With the Court Defined” see page 17.

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- As the custodian of court files, pleadings and other papers filed in cases are to be filed with the clerk according to the provisions of Trial Rule 5.
- All documents shall be file stamped as of the date filed in the clerk's office except that documents received by registered or certified mail or by third party commercial carrier are deemed filed upon mailing or deposit -- this means that the document will be file stamped with the date it was post marked or with some other official stamp on the face of the document indicating that, pursuant to TR 5(F), it is deemed filed on a specific date.
- Documents that are filed with a judge must be file stamped [(TR) 5(F)] and must be transmitted "forthwith" to the clerk's office. CCS entry must be made as close to contemporaneously as possible.
- Court orders must be file stamped as of the date they are filed in the clerk's office
- Confidential matters: Pleadings, orders, or judgments may be confidential by statute or under Administrative Rule 9, or may contain data fields designated confidential. For filing procedures, consult Trial Rule 5(G), Administrative Rule 9 and its corresponding “Rule 9: Privacy and Public Access to Court Records User Manual,” distributed by the Division of State Court Administration, and available on line at the Division's web site.

## **Trial Rule 77(G)**

### **Case File Status.**

- (1) The clerk of the circuit court shall maintain the case files, as set forth under section (C) of this rule, in either a pending or decided status. Pending files, arranged by assigned case number, consist of all cases which have not been decided. Decided files consist of the actions which have been concluded and no further proceedings remain to be conducted as evidenced by the final judgment or other order of the court.
- (2) When a case has been decided, the file shall be assigned a disposition date pursuant to Administrative Rule 7 of the Indiana Supreme Court and maintained under the original case number in a location apart from pending files. In the event a decided case is re-docketed for consideration by the court, the disposition date shall be deleted from the file and the case file returned to the pending cases in sequence with the case number originally assigned. A disposition date shall be reassigned at the time the case returns to a decided status.

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- A clerk's record keeping system should distinguish between pending cases before the court and cases that have been concluded.
  - Upon conclusion of a case, the clerk's office should maintain the closed case in accordance with the appropriate records retention schedule found in Administrative Rule 7.
  - The Division of State Court Administration recommends that dismissed case files be maintained separately by year of dismissal to facilitate their destruction in the year following the two years after the order to dismissed has been given.

## **Trial Rule 77(H)**

**Statistics.** The clerk of the circuit court shall establish procedures to determine a statistical count of all actions filed, decided, and reinstated as required by the division of state court administration.

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- This section corresponds to Administrative Rule 1(B) that requires courts to prepare quarterly case status reports and provides that “[t]he judge of the trial court may require clerks, court reporters, or any other officer or employee of the court to furnish the information needed to prepare the quarterly case reports.”

## **Trial Rule 77(I)**

**Replacing lost papers.** If an original pleading or paper filed with the clerk of the circuit court cannot be located within the record keeping system set forth under this rule, the court may authorize a copy of such record to be filed and used as the original.

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- This provides for a means of officially replacing documents that may be misplaced or otherwise absent from the case file.

*Reference is made to Administrative Rule 10(B), which says that “[e]ach Clerk is responsible for the maintenance of court records in a manner consistent with the directives of the Supreme Court of Indiana, judge of court, and other pertinent authority. In all instances, the Clerk of the court must safeguard the integrity and security of all court records in his or her custody and diligently guard against any prohibited practice.”*

## **Trial Rule 77(J)**

**Method of record keeping.** Under the direction of the Supreme Court of Indiana, the clerk of the circuit court may, notwithstanding the foregoing sections, keep records in any suitable media. The record keeping formats and systems and the quality and permanency requirements employed for the chronological case summary, the case file, and the record of judgments and orders (order book) shall be approved by the division of state court administration for compliance with the provisions of this rule.

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- Historically, records were maintained in paper format, and then microfilmed for permanent retention.
- Computerization and digital media have created many new opportunities and also many potentially dangerous situations in terms of records security, storage, and retrieval.
- Clerks and courts are encouraged to explore more efficient means of storing and retrieving documents and files; however, all such methods **must** be reviewed and approved by the Division of State Court Administration
- Administrative Rule 6 sets forth very explicit standards for imaging and microfilming. In addition, new technological advances in information management must have adequate safeguards built into the process to ensure that records are not inadvertently lost or otherwise rendered unusable. Even systems that appear to be compliant with Administrative Rule 6 **must** be reviewed and approved by the Division of State Court Administration.

## **Trial Rule 77(K)**

**Electronic Posting of Court Records.** The clerk, with the consent of the majority of the judges in the courts of record, may make court records, including but not limited to the chronological case summary, record of judgments and orders, index, and case file available to the public through remote electronic access such as the Internet or other electronic method. The records to be posted, the specific information that is to be included, its format, pricing structure, if any, method of dissemination, and any subsequent changes thereto must be approved by the Division of State Court Administration under the direction of the Supreme Court of Indiana. Such availability of court records shall be subject to the applicable laws regarding confidentiality.

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- Courts and clerks are encouraged to seek out ways of improving access to court records by the public, attorneys, and parties.
- Any county wishing to post records to the Internet or otherwise make records available electronically must seek the written approval of the Division of State Court Administration.
- Currently, approvals are given for electronic posting of court records each January, and each approval permits the posting of court records electronically for a 12-month period of time. Each January, the Division of State Court Administration reviews all electronic posting of court records for content and pricing structure, to help ensure the integrity of Indiana's court record systems.



## **Trial Rule 5(F)**

**Filing With the Court Defined.** The filing of pleadings, motions, and other papers with the court as required by these rules shall be made by one of the following methods:

- (1) Delivery to the clerk of the court;
- (2) Sending by electronic transmission under the procedure adopted pursuant to Administrative Rule 12;
- (3) Mailing to the clerk by registered, certified or express mail return receipt requested;
- (4) Depositing with any third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid, properly addressed; or
- (5) If the court so permits, filing with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit.

Any party filing any paper by any method other than personal delivery to the clerk shall retain proof of filing.

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- Filings received that comply with the strict requirements of Trial Rule 5(F) are to be considered officially filed on the date of mailing or deposit. This is usually recorded by the post-mark date stamped on the envelope or receipt.
  - “Strict” requirements means that not all filings received through the mail are considered filed when mailed. For example, a filing sent through regular first-class mail without a return receipt requested is considered filed when the clerk’s office receives it, not when it was mailed.
  - See *page 11* for additional comments.